

Act shall be considered issued at the time when the standard is officially filed in the Office of the Federal Register. The time of official filing in the Office of the Federal Register is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.

(b) If the Assistant Secretary wishes to consult an advisory committee on any of the proposals as permitted by section 7(b) of the Act, he shall afford interested persons an opportunity to inspect and copy any recommendations of the advisory committee within a reasonable time before the commencement of any informal hearing which may be held under this part, or before the termination of the period for the submission of written comments whenever an informal hearing is not initially noticed under § 1910.11(b)(4) of this chapter.

(c) Section 6(c) requires that any standard must be promulgated following the rulemaking proceeding within 6 months after the publication of the emergency standard. Because of the shortness of this period, the conduct of the proceeding shall be expedited to the extent practicable.

[37 FR 8664, Apr. 29, 1972, as amended at 42 FR 65166, Dec. 30, 1977]

#### HEARINGS

##### § 1911.15 Nature of hearing.

(a)(1) The legislative history of section 6 indicates that Congress intended informal rather than formal rulemaking procedures to apply. See the Conference Report, H. Rept. No. 91-1765, 91st Cong., second sess., 34 (1970). The informality of the proceedings is also suggested by the fact that section 6(b) permits the making of a decision on the basis of written comments alone (unless an objection to a rule is made and a hearing is requested), the use of advisory committees, and the inherent legislative nature of the tasks involved. For these reasons, the proceedings pursuant to § 1911.10 or § 1911.11 shall be informal.

(2) Section 6(b)(3) provides an opportunity for a hearing on objections to proposed rulemaking, and section 6(f) provides in connection with the judicial review of standards, that deter-

minations of the Secretary shall be conclusive if supported by substantial evidence in the record as a whole. Although these sections are not read as requiring a rulemaking proceeding within the meaning of the last sentence of 5 U.S.C. 553(c) requiring the application of the formal requirements of 5 U.S.C. 556 and 557, they do suggest a congressional expectation that the rulemaking would be on the basis of a record to which a substantial evidence test, where pertinent, may be applied in the event an informal hearing is held.

(3) The oral hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

(b) Although any hearing shall be informal and legislative in type, this part is intended to provide more than the bare essentials of informal rulemaking under 5 U.S.C. 553. The additional requirements are the following:

(1) The presiding officer shall be a hearing examiner appointed under 5 U.S.C. 3105.

(2) The presiding officer shall provide an opportunity for cross-examination on crucial issues.

(3) The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.

[37 FR 8664, Apr. 29, 1972, as amended at 37 FR 12231, June 21, 1972]

##### § 1911.16 Powers of presiding officer.

The officer presiding at a hearing shall have all the powers necessary or appropriate to conduct a fair and full hearing, including the powers:

(a) To regulate the course of the proceedings;

(b) To dispose of procedural requests, objections, and comparable matters;

(c) To confine the presentations to the issues specified in the notice of

hearing, or, where no issues are specified, to matters pertinent to the proposed rule;

(d) To regulate the conduct of those present at the hearing by appropriate means;

(e) In his discretion, to permit cross-examination of any witness;

(f) To take official notice of material facts not appearing in the evidence in the record, so long as parties are entitled, on timely request, to an opportunity to show the contrary; and

(g) In his discretion, to keep the record open for a reasonable, stated time to receive written recommendations, and supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

#### **§ 1911.17 Certification of the record of a hearing.**

Upon completion of the oral presentations, the transcript thereof, together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the officer presiding at the hearing to the Assistant Secretary.

#### **§ 1911.18 Decision.**

(a)(1) Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the Assistant Secretary shall publish in the FEDERAL REGISTER either an appropriate rule promulgating, modifying, or revoking a standard, or a determination that such a rule should not be issued. The action of the Assistant Secretary shall be taken after consideration of all relevant matter presented in written submissions and in any hearings held under this part.

(2) A determination that a rule should not be issued on the basis of existing relevant matter may be accompanied by an invitation for the submission of additional data, views, or arguments from interested persons on the issue or issues involved. In which event, an appropriate rule or other de-

termination shall be made within 60 days following the end of the period allowed for the submission of the additional comments.

(b) Any rule or standard adopted under paragraph (a) of this section shall incorporate a concise general statement of its basis and purpose. The statement is not required to include specific and detailed findings and conclusions of the kind customarily associated with formal proceedings. However, the statement will show the significant issues which have been faced, and will articulate the rationale for their solution.

(c) Where an advisory committee has been consulted in the formulation of a proposed rule, the Assistant Secretary may seek the advice of the advisory committee as to the disposition of the proceeding. In giving advice to the Assistant Secretary, an advisory committee shall consider all matter presented to the Assistant Secretary. The advice of an advisory committee shall take the form of written recommendations to be submitted to the Assistant Secretary within a period to be prescribed by him. When the recommendations are contained in the transcript of the meeting of an advisory committee, they shall be summary in form. See §§ 1912.33 and 1912.34 of this chapter.

(d) A rule promulgating, modifying, or revoking a standard, or a determination that a rule should not be promulgated, shall be considered issued at the time when the rule or determination is officially filed in the Office of the Federal Register. The time of official filing in the Office of the Federal Register is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.

[37 FR 8665, Apr. 29, 1972, as amended at 42 FR 65166, Dec. 30, 1977]

### **PART 1912—ADVISORY COMMITTEES ON STANDARDS**

Sec.

1912.1 Purpose and scope.

#### **ORGANIZATIONAL MATTERS**

1912.2 Types of standards advisory committees.